

JUL 13 2018

**MINUTES  
FOR THE MEETING OF THE  
BOARD OF LAND AND NATURAL RESOURCES**

DATE: FRIDAY, APRIL 27, 2018  
TIME: 9:30 A.M.  
PLACE: KALANIMOKU BUILDING  
LAND BOARD CONFERENCE ROOM 132  
1151 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813

**MEMBERS**

Suzanne Case  
Thomas Oi  
Stanley Roehrig

Chris Yuen  
Keone Downing  
James Gomes

**STAFF**

Russell Tsuji/LAND  
Kevin Moore /LAND  
Maria Carnavale/DAR  
Ed Underwood /DOBOR  
Cal Miyahara/LAND  
Scott Fretz/DOFAW

Sam Lemmo/OCCL  
Emma Yuen/DOFAW  
David Smith/DOFAW  
Keiki Kipapa/DOBOR  
Barry Cheung/LAND

**OTHERS**

Colin Lau/AG  
Nalani Fujimoto/D2  
Keith Fujimoto/D2  
Leigh-Wai Doo/K4  
Stephen Rafferty/C1  
Davis Yogi-DOT Harbors  
Leslie Dance/D5  
Cal Chipchase/K2  
Paige Deponte/D3  
David Millwood/E1

Kristi Ono/K1  
Malama Solomon/D2  
Fred Fong/K4  
Bill Saunders/K4  
Jim Murphy/D4  
Carl Young DOT Harbors  
Chris Sadayasu/D5  
Shon Magsalin/  
Ronald Sato/K4  
Liko Martin/D8

Chair Case called the meeting to order at 9:35 a.m. and read the standard contested case hearing statement.

***Items D-1 and Item D-7 will be withdrawn from the today's agenda.***

**ITEM D-8** After the Fact Delegation of Authority to the Chairperson to Approve Rights of Entry to Utilize State Lands on the Island of Kaua'i to Assist in Emergency Relief Efforts.

Russell Tsuji, Land Division, the Governor signed a proclamation for the entire island of Kaua'i effective April 15, 2018, in order to expedite emergency response and recovery after heavy rains and flooding resulted in considerable damage and losses. Land Division has had multiple inquiries from various agencies island-wide for the use of State lands for various emergency relief purposes including temporary storage of storm debris. The delegation of authority would allow the Chairperson to approve rights-of-entry not to exceed a period of one-year, to assist in the ongoing emergency relief efforts on Kaua'i.

#### Board Discussion

Gomes asked what are the plans for the debris? Tsuji said he did not know the specifics, right now they need a place to store it. Gomes said he understood, he related that on Maui when Iao Valley flooded, when they were taking out rocks and boulders to another location, we had SHPD and the community stepping in and saying these rocks need to go back to Iao because of their sacredness and not to be crushed. Tsuji said they did not say what kind of debris, a lot of it was mud.

Yuen suggested preparing a generic Delegation of Authority to the Chair whenever there is an Emergency proclamation. This will come up again.

Oi thought this was in place already. Tsuji said that was rescinded. Oi commented that land owners and farmers will be requesting right of entries to maintain their irrigation ditches and culverts.

#### Public Testimony

*Liko Martin*, lead consultant NHO, for DOT on Kaua'i, Puna District. If that authority is given it must adhere to the consultants in the same format, like a Section 106. You are going to have auwais, heiaus, burials, under the National Historic Preservation Act, State Regulations, from my perspective and responsibilities and other peoples responsibility to things Hawaiian. I think it is a requirement in the event the Board approves this delegation, that you have to be accompanied by an on-island person who are qualified to represent and ensure, you get the nature of what I am talking about.

Case asked Martin, if his concern is in responding to emergencies, the historic preservation laws are not by-passed? Martin said absolutely. Case replied that obviously everyone wants to take great care, as they work through this emergency, the proclamation itself suspends certain laws

and this action does not do it, it is the emergency proclamation that does that. This action is only to let people use land to respond to the emergency.

Case said, to clarify, this action is to delegate to the Chair the authority to approve rights of entry to use State land to manage the emergency relief efforts on Kaua'i consistent with the proclamation.

Martin said at the State level that is okay, but on the Federal level he insists that any people on the land, have the oversight to put everything back to pristine condition. He felt that in the confusion, a guide would be needed.

Case said she took his point to heart, in reviewing rights of entry she will take a careful look at what exactly is going on and what the conditions are. In most cases this will be mostly stuff along the roadside, it is a pile of mud right now. We have a lot of miscellaneous State land in that area, this is not a reconstruction part, people need to use our space to manage the emergency effort.

Martin said he felt they really need a guide for oversight with due respect. He wanted assurances. Case replied that we want an open dialogue and she would give him contact information for the Land Division and Historic Preservation.

#### **MOTION**

**Approved as submitted (Oi, Gomes) unanimous.**

**ITEM D-4** Issuance of Right-of-Entry Permit to the Honolulu Habitat for Humanity for Due Diligence Purposes on Lands Situated in Honolulu and Aiea, Oahu, Tax Map Keys (1) 1-7-041:002; 2-2-013:004 and 014; 9-9-044:020 and 024.

Russell Tsuji, Land Division, the reason for the due diligence, Applicant would like to determine suitability for housing projects. Applicant's representative Jim Murphy is present to answer questions.

Board Discussion-None

#### **Public Testimony**

*Jim Murphy*, Executive Director (Applicant) thanked the Board for the opportunity to look at the properties to see if there are any environmental concerns. Combined we think we can house 12-14 families. The land would be leased to the State by the families, they would have zero-interest mortgage through Habitat for Humanity and work through sweat equity on the house. It would be a collaboration with the State, our and the community.



## **MOTION**

**Approved as submitted (Roehrig, Gomes) unanimous.**

- ITEM M-1** Amendment No. 3 to Concession Agreement No. DOT-A-16-0012 for Addition of Space Allocated for Storage, Wi-Fi Services Concession, Boingo Wireless, Inc., Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-003: (Portion)
- ITEM M-2** Issuance of a Revocable Permit for Vehicle Parking, Vincent J. Cole, Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-76: Portion of 23.
- ITEM M-3** Issuance of a Revocable Permit for a Field Office and a Parking Stall, Engineers Surveyors Hawaii, Inc., Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-003: 066 (Portion).
- ITEM M-4** Issuance of a Revocable Permit for Space for a Freight Forwarding, Warehousing and Trucking Operation, Honolulu Freight Service, Daniel K. Inouye International Airport, Tax Map Key: (1) 1-5-35-010.
- ITEM M-5** Amendment No. 30 to Concession Agreement No. DOT-A-92-0018 for Addition of Storage Space and Grease Interceptor, Restaurant and Lounge Concession, Host International, Inc., Daniel K. Inouye International Airport, Tax Map Key: (1) 1-1-003:001 (Portion).

Ross Smith, DOT-Airports Division, summarized **Items M-1 through M-5** and present to answer questions.

## **Board Discussion**

**ITEM M-4:** Roehrig and Yuen wanted to know why this was not on a long-term lease. They have been there since 1995. Smith replied that historically it has been on a RP. There was further discussion regarding putting the space up for auction. There is the issue of how long the company has been using the building and whether rent should be collected.

Oi requested Smith to review the records of Revocable Permits that have come to the Board and come up with a report on which RP's can be put up for public auction starting from 2016 and report back to the Board within a year.

## **Public Testimony-None**

## **Conditions:**

- 1. Revocable Permit approved for 6-months**
- 2. Sentiment of the Board to put up entire property for public auction.**
- 3. Return in 3-months to report back with the following:**



- *Progress of request for authorization to go to Public Auction or report back, for these reasons DOT does not think public auction is the way to go for this property*
- *Answer the questions how long the tenant has been using the Building*
- *DOT proposal to collect back rent for that time period the tenant has been using the building*

**MOTION FOR ITEM M-4**

Approved for 6-months with conditions (Yuen, Gomes) unanimous.

**MOTION - ITEMS M-1, M-2, M-4 AND M-5**

Approved as submitted (Roehrig, Gomes) unanimous.

**ITEM M-6** Issuance of a Construction Right-of-Entry to Matson Terminals, Inc. for the Completion of Tenant Improvements and Capital Improvements Projects within the Sand Island Container Facility, Piers 51, 52, and 53. Honolulu Harbor, Oahu, Hawaii, Tax Map Key No(s): (1) 1-5-041: Portions of 049, 111, 115, 170, 185, 200, 313, 320, 321, and 324.

Davis Yogi, DOT, Harbors Division present to answer questions.

**Board Discussion**

Gomes asked how much the Applicant will be spending on improvements? Paul Johensque, Matson Representative, said approximately 63 million.

**Public Testimony-None**

**MOTION**

Approved as submitted (Gomes, Roehrig) unanimous.

**ITEM M-7** Issuance of a Revocable Permit to McCabe, Hamilton & Renny Co. LTD for Stevedoring Equipment Storage at Pier 19 Warehouse, Honolulu Harbor, Oahu, Hawaii, Tax Map Key: (1) 1-5-039:063 (Portion).

Carl Young, DOT, Harbors Division, present to answer any questions.

**Board Discussion**

Case asked if this was an expansion of an existing RP how long has this been on a RP? Young, said it has been there since 1999.

Roehrig asked if this is related to collective bargaining process? Young replied no, it is to manage their equipment better and put them in one place.

Downing asked when was the last rental re-opening? Young did not have that information. The re-opening period is going on now and they are gathering the information from the appraisals and update.

Public Testimony-None

**MOTION**

**Approved as submitted (Roehrig, Gomes) unanimous.**

**ITEM D-2** Quitclaim of State's Interests, if Any, in the Abandoned Government Roadway off Kynnersley Road, to the County of Hawaii, Nunulu Nui, North Kohala, Hawaii, Tax Map Key: (3) 5-4-001: 005.

Russell Tsuji, Land Division, gave the history how the State acquired the abandoned roadway in 1954. The County of Hawaii requested the conveyance of this parcel so the adjacent properties would be able to purchase the remnant parcel from the County. By way of the Quitclaim deed, the State is releasing and disclaiming any interest since our assertion that the County already owns the road. The County of Hawai'i, DPW may elect not to sell the road lot. To clarify, this is a road and not a trail under HRS 264. The abutting land owners are present.

Board Discussion

Roehrig commented on the Big Island there is a lot of back and forth over is it State or County? This is a positive way to clean-up the ownership and maintenance of the roads.

Yuen asked several questions regarding the time frame? Tsuji replied that it was pending for a long time and no one has maintained it and the Owner would like to have the road cleared to be able to access their property. Yuen asked if there was a reason the quit-claim deed need to happen before it goes to the County Council.

Tsuji replied, if there is a process that needs approval by the County, we are not going to proceed to convey until all the preliminary approvals are obtained.

Yuen said the North Kohala Community Development plan has identified a public access in this area. His concern was maintaining public access and understanding where that may be. Tsuji said he was not aware of any access that the Community Development Plan has. Yuen asked if any of this area publicly owned? Tsuji said it was a County road.

Oi, said because of HRS 264 and Act 288, it gives clear title to the property.

### Public Testimony

*Malama Solomon*, land owner, her concerns were that she needed access to her property because she is now land locked. In the past when the plantations were operating, they used the old cane haul road. The road has not been maintained since the plantation has shut down and now she has to ask her neighbor for access her property over their land. Regarding public access, there is none off of Kynnersley Road.

*Nalani Fujimoto*, land owner, presented a map for the Members to view to get a better perspective of where the parcels were in relation to the cane haul road in question. We are not sure why the State subdivided the parcels but the cane haul road went in between. Since they were using the cane haul roads above our parcels, they closed off the road in question. The public access to the mountain is through Kaauhuhu Homestead Road.

*Bob Masuda*, DLNR First Deputy Director, said he checked with all the divisions and no one has any interest in this road. From our point of view, acknowledging that we have no claim and giving it over to the County so they can provide access to the families. He acknowledged that he has known the families for a long time. He recommends giving it to the County and let the County work with the families.

Roehrig said there are two things that are important here. This was either State or Territory land you got. If it has roads on it, it is intended to be State roads, that is why it is on the map. In this situation where the County is sorting out the details, he suggests that we take a vote and give the Mayor's administration to work with the land owners.

He acknowledged Yuen for being the person to make sure we have robust public access around the State.

Yuen continued with his questions regarding the road. Solomon acknowledged that their parents maintained the road. Now that their gone, no one else maintains it. It is all overgrown. Yuen asked what the process with the County is to convey it. Land Division will contact County and get clarification.

*10:51 a.m.: Recess*

*11:00 a.m.: Back in session*

### ***Amendment:***

***Land Administrator to advise the County of Board member Yuen's concern that there be public access to lands at the higher elevations where an old cane haul road exists or once existed.***

### MOTION

Approved as amended (Oi, Gomes) Yuen voted no.



**ITEM D-3** Administrative Enforcement Action for Violation of Hawaii Administrative Rules Chapter 13-221, Unencumbered Public Lands, Sections 13-221-11 "Animals" and 13-221-35 "Commercial Activities", Against Paige Clew DePonte and TLR LLC, One or Both of Whom Are Doing Business as Triple L Ranch and/or Triple L Ranch Maui Private Custom Horseback Tours; DOCARE Investigation Report No. 18-0259-MA; Kanaio, Maui; Tax Map Key: (2) 2-1-002:001 and seaward of same.

Kevin Moore, Land Division, presented the submittal and noted the violations. DOCARE Officer DeCambra is present to answer questions regarding the incidents. Paige DePonte is present as well.

#### Board Discussion

Gomes asked DePonte if she was using State lands to conduct Private Horseback Tours. DePonte denied using State Lands and stated she was a Commercial Rancher. Gomes commented that it is documented that she had been notified numerous times that no commercial activity was allowed on government lands without a permit. yet she continued horseback riding tours down to the beach.

Officer DeCambra noted that on November 10, 2017, he was in the area and observed a group of people with horses and a vehicle with beach chairs, coolers and a folding table. When he interviewed the adults, he learned they had paid \$500.00 to participate in the commercial horseback riding tour that led to beach where they would be allowed to swim, pick shells, and included a picnic lunch at the shoreline conducted by Triple L. Ranch on Parcel 001. Ms. DePonte-Simpson explained that they were employees of Triple L Ranch and her mother Paige DePonte was the owner and operator of Triple L Ranch.

Gomes asked DeCambra, when he spoke to the visitors, where were they? DeCambra said well below the homestead lots. Gomes noted that over the past several years he has received complaints regarding fecal matter along the beach and a lot of people have a strong attachment to land and it appears to hamper public access with limited spots, complaints about tables and a Jeep belonging to Triple L Ranch.

Downing asked DePonte where her property ended and what was the proximity of her property to the beach. She has to cross over unencumbered public lands to get to down to the beach. You would still need an easement and permit.

DePonte stood by her statement that she is a Commercial Rancher and felt she did not do anything wrong and provided a history of the ranch.

Oi asked DeCambra if he encounter any other tours. DeCambra replied, no, just the one from Triple L Ranch.

**Motion**

**Gomes moved to approve the staff recommendation. Yuen seconded the motion. Prior to any discussion or a vote being taken,**

***Paige DePonte orally requested a contested case hearing. Accordingly, the Board did not vote on the matter, it would wait for the written request and then proceed with the contested case.***

**ITEM C-1** Approve Grants from available funds in the Land Conservation Fund, as requested in applications to the 2017-2018 Legacy Land Conservation Program, for:

(1) The payment of \$1,500,000 in debt service on the Turtle Bay Reimbursable General Obligation Bonds, and

(2) The Acquisition of Interests and Rights in specific parcels of Land for:

- A. Wai'anae Community Redevelopment Corporation, \$750,000 for the acquisition of 21.1 acres at Wai'anae, O'ahu (Ma'O Organic Farms Palikea Expansion - Phase One), Tax Map Key Number: (1) 8-7-010:006;
- B. Friends of Amy B.H. Greenwell Ethnobotanical Garden, \$750,000 for the acquisition of 13.6 acres at Kona, Hawai'i (Amy B.H. Greenwell Ethnobotanical Garden), Tax Map Key Numbers: (3) 8-2-013-002, (3) 8-2-013-003, (3) 8-2-013-014, (3) 8-2-014-043, And (3) 8-2-015-059;
- C. Division of Forestry and Wildlife, \$1,500,000 for the acquisition of 3,277 acres at Kula, Maui (Kamehamehenui Forest), Tax Map Key Numbers: (2) 2-3-005:002 and (2) 2-3-005:014;
- D. The Nature Conservancy, \$400,000 for the acquisition of a Conservation Easement over 229 Acres at Kona, Hawai'i (Ho'omau Forest and Ranch), Tax Map Key Number: (3) 8-9-001:023 (Por.); and
- E. Division of Forestry and Wildlife, \$100,000 for the acquisition of a Conservation Easement over 764 acres at Kona, Hawai'i (Ho'omau Forest and Ranch) Tax Map Key Numbers: (3) 8-8-001:022, (3) 8-8-001:032, and (3) 8-8-001:033

and:

Declare that each approved Award of Grant Funds for the acquisition of Interests and Rights in specific parcels of Land is Exempt from the preparation of an Environmental Assessment, Pursuant to Sections 343-5 and 343-6, Hawai'i Revised Statutes and Section 11-200-8, Hawai'i Administrative Rules.

David Smith and David Penn, Division of Forestry and Wildlife, provided background on the applications for grants that were requested from the Land Conservation Fund.

Board Discussion-None

Public Testimony

*Liko Martin*, had concerns regarding native Hawaiian accesses to the lands that are involved. He wanted assurances that the land will be taken care of by these groups.

Motion

**Approved as submitted (Roehrig, Gomes) unanimous.**

*Liko Martin requested a contested case. Based on legal advice Member Yuen made the motion to deny a contested case hearing. Member Oi second the motion. Unanimous. Mr. Martin was advised that he could follow-up with a written request within 10-days.*

**ITEM D-5** Issuance of Right-of-Entry Permit to EAS Enterprises, LLP dba AVP for Beach Activities Purposes from September 9 to 20, 2018, on portions of Fort DeRussy Beach and Duke Kahanamoku Beach, Waikiki, Honolulu, Oahu, Tax Map Key: (1) 2-3-037: portions of 021 and 2-6-005: seaward of 001.

Russell Tsuji, Land Division present the submittal, applicant is present to answer questions.

Leslie Dans & Kalani Kalanana, in addition to being a free event and the marketing for the State of Hawaii. We will have youth volleyball clinics & community activities. Asking for 10-cents instead of 25-cents per square foot for the land permit.

Public Testimony-None

Board Discussion

Downing asked if they are covered by insurance. Tsuji said all our standard forms require for a Right-of-Entry.

Gomes asked if this event been in other places in the United States and what kind of fees have you been paying. Dans replied this is a tour and Hawai'i is the last stop. They have not had to pay more than \$40,000.



Downing asked how many teams? Dans said (8) women's and (8) men's from (8) countries. The hope is that it will become an Olympic qualifier next year. Downing asked how much was HTA investing? Dans said \$500,000. Downing asked if that was normal for an event that they put on? Do all the other cities pay that? Dans said yes.

Gomes asked if they knew how much income does this generate for the State? Dans replied that they have 500 rooms just for the players and families. This is Olympic caliber volleyball.

Downing asked if they tested the sand as it is different in both areas. Dans said yes.

There was further discussion regarding setting a precedent when an event uses both an area that is under the jurisdiction of land and boating for consistency.

***Amendment:***

***Amend the cost per square foot from 25-cents to 10-cents per square foot; the revenues to be deposited to the respective special land and development fund and the boating special fund, as may be allowed by law.***

**Approved as amended (Downing, Roehrig) unanimous.**

**ITEM K-1** Conservation District Use Application (CDUA) MO-3815, Regarding the Modified Kaunakakai Drainage System Improvement Project by the County of Maui – Department of Public Works, Located at Kaunakakai, Island of Moloka'i, Tax Map Key(s): (2) 5-3-005:006 and (2) 5-3-005:007.

Sam Lemmo, Ocean Conservation and Coastal Lands, brought attention to Exhibit 7, which shows where the flooding occurs, and what they want to do is a culvert, they want to install an earth berm, flood wall to direct the flow of the water.

Board Discussion

Roehrig mentioned the Clean Water Act. That this matter be reviewed by the AG's office to ensure that Maui County is in compliance with Clean Water Act. Lemmo said that there is a condition in the application

Marissa Fujimoto, and Chrissy Ono, we did do a Chapter 343 Environmental Assessment. All requests for permits have been applied for as required.

Yuen asked if they had a NPDES permit. Ono replied yes, if it is required. They plan to be in full compliance.

Public Testimony-None

**MOTION**

**Approved as submitted (Gomes, Oi) unanimous.**

**ITEM K-3** Time Extension Request HA-18-08 for Conservation District Use Permit (CDUP) HA-3682 for a Single-Family Residence by Ms. Shon Magsalin at Waawaa Ahupua'a, Puna District, Hawaii, Tax Map Key: (3) 1-4-028:007.

Sam Lemmo, OCCL, due to personal circumstances he would like to defer the request for an extension of the deadlines of the CDUP until the issues regarding potential permit and land use are resolved. Ms. Magsalin is present.

**Board Discussion**

Yuen disclosed that Ms. Magsalin lives in his neighborhood a couple of miles away.

Ms. Magsalin addressed the Board and explained the circumstances surrounding her permit to build and construct her retirement home. She was ready to give up. She was not aware of all the different violations she was doing. She hired a contractor to help her to do everything right.

Gomes asked if this is going to be a pole home. Magsalin said yes. Gomes asked Lemmo if he would assist Magsalin in the process as she does not really understand, and to make sure she has everything she needs. Lemmo replied, yes.

**Public Testimony-** None

**MOTION**

**Approved as submitted (Yuen, Roehrig) unanimous.**

**ITEM D-6** Grant of Term, Non-Exclusive Easement to Shea Alan Sutton for Pier and Seawall Purposes; Kaneohe, Koolaupoko, Oahu, Tax Map Key: (1) 4-5-058: seaward of 030.

Cal Miyahara, Land Division, presented the submittal.

**Board Discussion**

Roehrig mentioned that this is Land Court property and they will need to petition the Land Court to make the change on the Certificate of Title.

**Public Testimony-**None

**Motion**

**Approved as submitted (Roehrig, Gomes) unanimous.**

**ITEM K-2** Conservation District Enforcement MO 17-18 Regarding Unauthorized Dwelling Structures, Landscaping, and Accessory Uses by Geoffrey Cloward Located at 11196 Kamehameha V Hwy, Honouliwai, Moloka'i, Tax Map Key: (2) 5-8-002:001.

Sam Lemmo, OCCL, this is in East Moloka'i and in Conservation District land. We met with the homeowner and he agreed to sign a declaration to cease and desist on the vacation rentals. Several months went by and the homeowner said he would get back to us on the unauthorized structures. The Homeowner wanted to keep a portion of one to create a deck. If he complies with all the necessary permits and review process. What we want is compliance and fine the homeowner a total of \$15,000.00.

Board Discussion

Downing asked what can be built on conservation land. Lemmo said if you can get a permit, and get approval from the Land Board, you can build a single-family, you can do accessory structures.

Oi asked if commercial activity was allowed on Conservation Land is allowed? Lemmo replied, you have to get a permit, you have to have a public hearing and authorization from the Land Board. You cannot have TVR's, these are strictly prohibited by rule. You can get a permit for a long-term rental if you came to the Board.

Cal Chipchase, counsel for Mr. Cloward, we have been working with OCCL and we accept the staff recommendation.

Public Testimony-None

**MOTION**

**Approved as submitted (Gomes, Oi) unanimous.**

**ITEM K-4** Conservation District Use Application (CDUA) OA-3809 for the Proposed Shangri La Breakwater Safety Initiative and Shoreline Stabilization Project and Right-of-Entry to State-Owned Submerged Lands for the Purpose of a Staging Area by the Doris Duke Foundation for Islamic Art Located at Kupikipikio (Black Point), Waikiki Ahupua'a, Kona District, Oahu, Tax Map Key: (1) 3-1-041:005 and Makai of 005.

Sam Lemmo, OCCL, explained the nature of the request and the Applicant is present to answer any questions.

*Conrad Ng*, Doris Duke Foundation for Islamic Art, expressed the concerns regarding the shoreline fronting Shangri-La, there have been serious injuries and for the safety of public interest they would like to dismantle the breakwater and relocate the boulders along the base of the seawall.



Scott Ezer, HHF Planners, prepared the Environmental Assessment for the Conservation District Use Application. He provided a PowerPoint presentation showing the area of concern and pictures of unsafe behavior and activities that occurs in at the boat basin. The objective of this project is primarily for public safety and access project. We are trying to ensure that people who come to the shoreline here behave in a safe manner and protected from injury.

#### Board Discussion

Yuen asked if the fence would remain? Ezer said, yes, unless the unsafe activity changes. Yuen was concerned about the public access and asked to clarify that it would be the existing shoreline walkway and concrete steps at the Koko Head Breakwater. Ezer said yes.

Gomes asked about the method of dismantling the breakwater using a barge, what kind of safeguards do you have for the equipment on the barge in case of a broken hydraulic line or engine oil that would go into the bay.

Eric Iwasa, Moffett and Nichol Engineering, replied that the contractor will be required to prepare Best Management Practices which include that the equipment must be properly maintained. Should there be a leak, they will need to have oil-absorbent material on the barge to catch the leakage and a boon to suck up the oil that will likely float on the surface.

Gomes asked if the work primarily done in the day or evening? What kind of security will be in place while construction is going on. Iwasa said they have not gone into the methodology yet. It would be during the day to avoid any noise violation.

Oi, asked by lowering the wall how will the boulders be moving around during high surf? Iwasa said they do not anticipate the boulders moving. Oi asked if the boulders cause a hazard for the swimmers. Iwasa said no.

Roehrig's concern is he has looked at their modeling study, but that they have not studied the actual effects of what would happen in the pond when you have a big wave and you take away the Diamond Head barrier that blocks the waves from coming into the pond.

Eza said, the model did consider large swells up to a 12-1/2- foot swell. Roehrig said there is no discussion of what would happen to people in the pond if you have no barrier there. He would feel more confident if they got an EIS.

Downing asked Iwasa, you gave the tonnage of the rock, what is density of the basalt rock? The reason he is asking is that they think they are going to find a lava dike under there. Iwasa replied they are not certain if the dike will still be there. Downing said you show a picture that the dike there but in actuality it has not going to be there, he believes that the density of rock sitting on it broke it. Downing said that they are counting that the dike is there and it is going to break down the wave energy. What bothers me is how you talk about this tapered rubble rock wall against the seawall is going to stop wave action and in the same breath you say you want to put

it back as close to nature as you had. On the other side which the area that is natural at high tide when there is any kind of surf, the water splashes on the seawall that goes up to the pool. This plan is not going to slow down the wave action against the seawall. I think with the wall you have a better chance of slow down the wave action.

Yuen asked what is the plan if the dike is not there. Ezer said, the plan is to continue removal to the last layer of boulders. Reason for leaving the last layer of boulders, is to limit suspended stuff getting into the water and not change the character of the sea floor in that area.

Gomes, the whole intent of dismantling the wall if he heard correctly is to prevent injuries and avoid liability and it is a safety issue. The wall was constructed roughly around 1938, in the past 70-years how much liability has the Doris Duke Foundation endured as far as law suits against them? Is it more prevalent now with more ocean recreational people or has it been consistent till today?

Ng answered, it is more about the number of incidents of people getting seriously injured that we know of. It is not so much about liability. Our intent is to keep the continuity of recreational activities consistent and allowing people access.

Gomes commented that you have the same kind of cases of people jumping off other seawalls it does happen and not only in your area because of the seawall. We have the same kind of injuries across the shoreline. Ng, said they are trying to make it safer.

Roehrig, we have an unique situation here. The foundation owns the subterranean lands but the State still owns the water. We are responsible for the safety of the people in the water. Any adjustments made to the shoreline increase risks at the pond, also to the State, in addition to your desire to have a safer place, perhaps a more comfortable place because you have private property there.

Case commented that their goal is to eliminate the conditions so they cannot jump off rocks and hurt themselves, in doing that you are removing an artificial structure that has been there a long time, but it is not a natural structure. You are going back to a more natural condition that was there, but who knows what will happen when you remove the rocks and you are still facilitating public access into the water. When the water is calm people can swim there and when it is not, it is dangerous and you hope people have the sense to stay out of the water. But you are creating an artificial condition that would add to the danger. You are trying to remove an artificial condition that creates danger. Considering what we have heard in other places she thinks it is admirable that you are taking steps to try to minimize what has turned out to be a dangerous human caused condition.

#### Public Testimony

*Fred Fong*, provided a PowerPoint presentation showing different ways to help mitigate the jumping off the fences and the walls. He opposes taking down the breakwater.

*Lee-Wai Doo*, submitted written testimony this morning opposing this application. Would like to see a full EIS.

*Bill Saunders*, handed out Exhibits that were copies of the relevant statutes and relevant ordinances to the Board. He opposes the application. He felt the plan was flawed.

*Michelle Matson*, could not understand why the State Historic Preservation Division felt this site did not qualify. Felt it needed to be revisited.

The Board had a robust discussion regarding alternatives and other safety measures without having to take down the breakwater. It was determined that the human behavior is the utmost concern.

The Board voted 4 to 2 to deny the applicant's request. Yuen and Case voted against the denial. Yuen stated he wanted to defer for further discussion.

Yvonne Izu, Counsel for the Foundation, requested a contested case.

**ITEM E-1** Continuance of Revocable Permit No. SP0550 to Go Holoholo, Inc., a Hawaii Corporation for the Use of the Nutridge House and Grounds on State Parks Land at Pu'u 'Ualaka'a State Wayside, Opu, Makiki on the Island of O'ahu.

Curt Cottrell, State Parks, summarized the use of the permit and made a correction to under Recommendation (1) of submittal, to correct the date to *April 30, 2019*.

#### Board Discussion

Case said the tenant seems to be doing a good job maintaining the property. Very low impact.

Public Testimony- None

#### MOTION

**Approved as submitted (Downing, Oi) unanimous.**

**ITEM E-2** Assignment and Amendment of General Lease No. SP0141, Richard Singleton, Lessee, Waimea Canyon State Park, Lot 23, Puu Ka Pele Park Lots, Waimea (Kona), Kaua'i, Hawai'i, Tax Map Key: (4) 1-4-002:046. The Purpose of the Amendment is to Correct the Termination Date to Read December 31, 2028; Consent to Assign General Lease No. SP0141, Richard Singleton, Assignor, to Michael Keith Singleton, Assignee, Waimea Canyon State Park, Lot 23, Puu Ka Pele Park Lots, Waimea (Kona), Kaua'i, Hawai'i, Tax Map Key: (4) 1-4- 002:046.

Curt Cottrell, State Parks did not have anything else to add to the submittal.



Board Discussion-None

Public Testimony-None

**MOTION**

**Approved as submitted (Oi, Yuen) unanimous.**

*Oi asked for a reconsideration of the Motion for K-1. He had thought he was voting to defer the item, not deny it.*

**Motion to adjourn (Downing, Oi)**

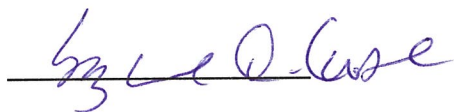
There being no further business, Chairperson Suzanne Case adjourned the meeting at 4:58 pm. Recording(s) of the meeting and all written testimonies submitted at the meeting are filed in the Chairperson's Office and available for review. Certain Items on the agenda were taken out of sequence to accommodate applicants or interest parties present.

Respectfully submitted,



Darlene S. Ferreira  
Land Board Secretary

Approved for submittal:



Suzanne D. Case  
Chairperson  
Department of Land & Natural Resources